The opinion in support of the decision being entered today was <u>not</u> written for publication and is <u>not</u> binding precedent of the Board.
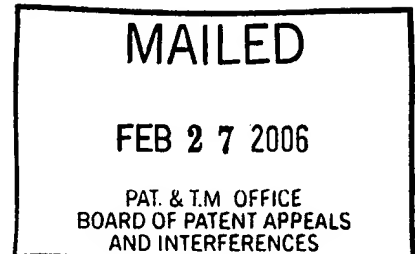
UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

<u>Ex parte</u> LIN YU

Appeal No. 2006-0424
Application No. 09/896,179

ON BRIEF

Before KRASS, BARRY , and MACDONALD, <u>Administrative Patent Judges</u>.

KRASS , <u>Administrative Patent Judge</u>.

<u>DECISION ON APPEAL</u>

This is a decision on appeal from the final rejection of claims 1-42.

The invention pertains to database systems which generally facilitate database inquiries by building an index file in addition to storing the data in a data file. In order to store and manage temporally spaced apart bursts of data records, collected over time, in a more efficient manner, the building of an index for a plurality of data records in a respective burst is deferred until after storing the plurality of data records in the respective burst in the database.

Independent claim 1, reproduced as follows, is representative:

1. A method of storing temporally spaced apart bursts of data records in a database, comprising:

deferring building an index for a plurality of data records in a respective burst until after storing the plurality of data records in the respective burst in the database.

The examiner relies on the following reference:

Cheng et al. (Cheng)   5,204,958   Apr. 20, 1993

Claims 1-42 stand rejected under 35 U.S.C. §102 (e)[1] as anticipated by Cheng.

Reference is made to the brief and answer for the respective positions of

appellant and the examiner.

OPINION

At the outset, we note that appellant has grouped and argued the claims in two

groups:

Group I consists of claims 1, 2, 8, 14, 15, 21, 28, 29, 35, and 36. Group II consists of

claims 3-7, 9-13, 16-20, 22-27, 30-34, and 37-42. The claims in each group stand or

fall together.

A rejection for anticipation under section 102 requires that the four corners of a

single prior art document describe every element of the claimed invention, either

expressly or inherently, such that a person of ordinary skill in the art could practice the

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[1]We find it curious that the examiner makes the rejection under 35 U.S.C. §102(e), rather than 35 U.S.C. §102(b), since the publication date of the reference, April 20, 1993, is more than one year prior to appellant's filing date of June 29, 2001, and no apparent claim for priority is made.

invention without undue experimentation. In re Paulsen, 30 F.3d 1475, 1478-79, 31

USPQ2d 1671, 1673 (Fed. Cir. 1994).

With regard to independent claims 1, 14, and 28, the examiner applied Cheng as

follows:

Cheng is said to disclose the step of storing the spaced apart bursts of data

records in a database at step 300 of Figure 4A and at column 2, lines 60-62, 65-67, and

column 6, lines 48-59.   Cheng is said to disclose the step of deferring the building of an

index for a plurality of data records in a respective burst until after storing the plurality of

data records in the respective burst in the database, at steps 300-302 of Figure 4A, and

at column 2, lines 45-48, and column 6, lines 60-64.

Appellant agrees that Cheng discloses deferring index building, but contends

that it is performed "in a different manner and for a different reason" (brief-page 4).

Specifically, appellant argues that Cheng is directed to high frequency data insertion, in

contrast to the "bursty" data, as described in the instant specification. Appellant asserts

that the definition of "burst data," found in the specification at page 2, lines 17-18,

requires that "large amounts of data are received during a burst of time and no or

relatively small amounts of data are received between the bursts of time" (see page 4 of

the brief). Under this definition, asserts appellant, Cheng's high frequency data

insertion system cannot be interpreted as disclosing "bursts of data," as claimed.

It is clear to us that the examiner is equating the "high frequency data insertion" of Cheng with the "temporally spaced apart bursts of data records" of the instant claims. Since Cheng does disclose the deferral of index changes (i.e., "building an index"), handling the updates to the stored log indexes in batches (column 2, lines 45-47), it does appear that Cheng performs the same type of operation on his data as does appellant.

The question then, in our view, comes down to whether appellant and Cheng are performing this operation on the same type of data. Even if the type of data is different, it may very well have been obvious to perform the operation disclosed in the prior art (viz., Cheng) on various other types of data, but, since the rejection before us is under 35 U.S.C. §102, and not under 35 U.S.C. §103, this issue is not before us. If the high frequency data of Cheng cannot be reasonably interpreted as "bursts of data," as claimed, then the rejection of the claims under 35 U.S.C. §102 cannot stand.

Claim interpretation must begin with the language of the claim itself. See Smithkline Diagnostics, Inc. v. Helena Laboratories Corp., 859 F.2d 878, 882, 8 USPQ2d 1468, 1472 (Fed. Cir. 1988). When interpreting a claim, words of a claim are generally given their ordinary and accustomed meaning unless it appears from the specification or the file history that they were used differently by the inventor. Carroll Touch, Inc. v. Electro Mechanical Sys., Inc, 15 F.3d 1573, 1577, 27 USPQ2d 1836, 1840 (Fed. Cir. 1993). A term recited in the claim is construed in light of its description

in the specification or in its commonly accepted technical sense. In re Barr, 444 F.2d

588, 170 USPQ 330 (CCPA 1971).

Since the claimed term in question here is "temporally spaced apart bursts of

data records," we must first look to the specification to determine if the inventor gave

this term special meaning. In describing the background of the invention at page 2 of

the specification, "temporal data" is defined as "data that is collected over time" and, in

describing temporally spaced apart bursts of data records at that page, the specification

refers to Figure 1 and how "large amounts of data are received during a burst of time

and no or relatively small amounts of data are received between the bursts of time."

With this meaning in mind, we look to Cheng. Cheng never uses the term "burst"

or data received in "bursts of time." What it does disclose is that "[w]henever a new

data record is received, it is stored..." (Column 6, lines 49-50, emphasis added). This

may suggest that new data records are received at various times, rather than

continuously. Cheng further indicates that new records are always written to the end of

the file in a temporal order (column 6, line 53). Thus, again, it would appear to suggest

that new data records are received at different times. Accordingly, Cheng at least

suggests that there are "temporally spaced apart data records." The question remains

as to whether they are temporally spaced apart "bursts" of data records.

At column 7, line 32, there is a recitation of a "surge" of record insertions. This

appears to be suggestive of a "burst" of record insertions. At column 1, line 53, through

column 2, line 30, as recited by appellant, at page 6 of the brief, Cheng recites a

number of transactions and a number of operations per second. Appellant interprets

these recitations as indicating high frequency, "continuous," transactions. We find no

evidence of "continuous" transactions in Cheng and, in any event, "continuous" is

relative in nature. Even at the "one hundred transactions per second" and "200 disk I/O

operations per second" recited in Cheng, and even if this was a regular, constant

occurrence, e.g., one hundred transactions each and every second, there would still be

some finite time between the seconds when there is "no or relatively small amounts of

data." Thus, Cheng's disclosure would appear to indicate large (a relative amount)

amounts of data received during a burst of time and no or relatively small amounts of

data received between the bursts of time, thus meeting appellant's definition of

"temporally spaced apart bursts of data records."

Accordingly, since the examiner's rationale for rejecting the claims appears

somewhat reasonable and appellant has not convincingly rebutted the examiner's

position by pointing out why Cheng's high frequency data insertion may not be

considered as the claimed "temporally spaced apart bursts of data records," we will

sustain the rejection of claims 1, 2, 8, 14, 15, 21, 28, 29, 35, and 36 under 35 U.S.C.

§102 (e).

Turning to the rejection of claims 3-7, 9-13, 16-20, 22-27, 30-34, and 37-42

under 35 U.S.C. §102(e), appellant makes arguments similar to those against the

rejection of claim 1, i.e., that Cheng does not appear to provide any description or suggestion of storing temporarily spaced apart bursts of data records that are received during a corresponding series of spaced apart time intervals. Moreover, argues appellant, Cheng does not describe or suggest storing the spaced apart bursts of data records in the database during the corresponding series of spaced apart time intervals. Finally, argues appellant, Cheng does not describe or suggest beginning to build the index for a corresponding one of the spaced apart bursts after expiration of the corresponding one of the series of spaced apart time intervals.

The examiner counters each and every one of these arguments at page 9 of the answer and we adopt those arguments as or own since they appear reasonable to us. Thus, the examiner has specifically pointed to particular portions of Cheng (column 6, lines 48-64, and Figures 3 and 4A), with a specific explanation as to how these portions are deemed to disclose the claimed features and appellant does not respond, preferring to rest on the general arguments in the brief that Cheng does not describe or suggest various features without showing, specifically how appellant deems the examiner's rationale to be in error.

Accordingly, we will also sustain the rejection of claims 3-7, 9-13, 16-20, 22-27, 30-34, and 37-42 under 35 U.S.C. §102(e).

The examiner's decision rejecting claims 1-42 under 35 U.S.C. §102 (e) is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv).

AFFIRMED

ERROL A. KRASS)
Administrative Patent Judge)
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) BOARD OF PATENT
LANCE LEONARD BARRY) APPEALS
Administrative Patent Judge) AND
) INTERFERENCES
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ALLEN R. MACDONALD)
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